

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

In the specification, the paragraph beginning at page 3, line 14, has been amended

Claims 12-18 are canceled. Claims 1-11 were previously canceled. New claims 19-25 are added. Thus, upon entrance of the present amendment, claims 19-25 are pending.

Objection to the specification

The examiner objects to the specification, stating that “there is no Description of Figures 1 and 2 in the ‘Brief Description of the Drawings.’” The specification is amended to include more detailed description of the figures in the Brief Description of the Drawings. Support for the amendment can be found in Figures 1 and 2. No new matter is added by this amendment.

Rejection under 25 U.S.C. § 112, first paragraph

The examiner rejects claims 12-18 under 35 U.S.C. § 112, first paragraph, because the specification “does not reasonably provide enablement for a method for treatment or prophylaxis chronic fatigue syndrome in a patient...” (emphasis in original). However, at page 3 of the pending Office Action, the examiner explicitly states that the specification is

enabling for a process of decreasing the expression of one or more of the inflammatory cytokines IFN- γ and IL-6 from cells in mammalian patients comprising administering to the patient an effective amount of stressed mammalian blood cells wherein said blood cells have been extracorporeally subjected to both oxidative conditions and UV radiation...” (emphasis is original)

Claims 12-18 are canceled. New claims 19-25 are drawn to methods of decreasing expression of one or more inflammatory cytokines, selected from the group of IFN- γ and IL-6, in a mammalian patient. Support for new claims 19-25 can be found in previously pending claims 12-18 and in the specification at, *inter alia*, page 2, lines 14-16. The new claims do not introduce

new matter to the application. In view of the examiner's statements regarding enablement of decreasing expression of inflammatory cytokines, including IFN- γ and IL-6, Applicant submits that new claims 19-25 are fully enabled and request withdrawal of the rejection.

Incorporation by reference

The examiner has required Applicant to amend the disclosure to include, at page 10, line 13, essential material in the specification from Kondo et al. Applicant submits that there is no need to amend the disclosure because the procedure of Kondo was summarized in the sentences immediately following the reference to Kondo. The specification states:

Briefly, to induce CHS, the abdominal skin of each mouse was shaved and painted with dinitrofluorobenzene (DNFB), the sensitizing chemical, using 25 μ l of 0.5% DNFB in a 4:1 acetone:olive oil solution. This sensitization was applied to four groups of five Balb/c mice.

Applicant submits that the specification already provides sufficient disclosure to permit one of ordinary skill in the art to perform a contact hypersensitivity (CHS) test according to approved animal experimentation procedures. Kondo, while providing additional detail regarding the procedure, does not provide any additional information essential for one of ordinary skill in the art to practice the invention.

Rejection under 35 U.S.C. § 103

The examiner rejects claim 12-18 under 35 U.S.C. § 103 as being unpatentable over WO 98/07463 or U.S. Patent No. 5,980,954 or WO 00/06703, each in view of CDC Report (1999). Claims 12-18 are canceled. Applicant submits that the rejection, thus, is moot.

The undersigned wishes to thank the examiner for the courtesy extended to Gerald Swiss and Bill Chan in the interview of 26 May 2005. The interview summary prepared by the examiner accurately reflects the substance of the interview.

Applicant believes that the present application is now in condition for allowance.
Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

Respectfully submitted,

Date 11 October 2005

By Karen E. Flick

FOLEY & LARDNER LLP
Customer Number: 38706
Telephone: (650) 251-1103
Facsimile: (650) 856-3710

Karen E. Flick
Attorney for Applicant
Registration No. 44,111